RECENT CASES.

ARREST—ATTEMPT TO ESCAPE—OFFICER'S RIGHT TO KILL.—PETRIE V. CARTWRIGHT, 70 S. W. 297 (KY.).—*Held*, that an officer was not justified in killing a man fleeing to escape arrest for an offense less than felony, although the officer had reasonable grounds for believing that a felony had been committed.

Where in fact a felony has not been committed an officer as well as a private person acts at his peril. *State v. Rutherford*, 9 Am. Dec. 638; *Carr v. State*, 43 Ark. 99; *Lacy v. State*, 7 Tex. App. 403. The rule is laid down otherwise in *State v. Evans*, 161 Mo. 95, but the statement was *obiter dictum*. See also, *State v. Underwood*, 75 Mo. 230; *Conraddy v. People*, 5 Parker (N. Y.) 234.

BANKRUPTCY—NO JURISDICTION TO ADJUDGE LUNATIC A BANKRUPT.—IN RE JOSEPH EISENBERG, 8 AM. B. R. 551.—*Held*, that the court has not jurisdiction to entertain the petition of a lunatic, filed by his committee, to be adjudicated a bankrupt.

This question is apparently a novel one, no controlling authorities being found. The weight of authority holds that an insane person may be adjudged a bankrupt in involuntary proceedings; *In re Pratt*, 6 B. R. 276; *Collier, Bankruptcy*, 53, and cases cited; even in opposition to wishes of guardian, *In re Weitzel*, 14 B. R. 466. But this is so only when acts of bankruptcy were committed while sane. *In re Marvin*, Fed. Cas. No. 9178. In that case, Dillon, J, says: "As to whether an insane person may on petition of himself or guardian go into voluntary proceedings, the court gives no opinion." But the requirement in that case, where acts of bankruptcy had been committed while insane, of the consent of guardian to involuntary proceedings, intimates that the Bankruptcy Act could be invoked in favor of an insane person. Such is the ruling in the English cases. *In re James*, 12 Q. B. D. 332; *In re Lee*, 23 Ch. Div. 216. In 3 *Parsons, Contracts* 461, it is stated that an insane person can take advantage of the bankruptcy law, but no authorities are cited. That a lunatic could take out a petition in a lucid interval, see *Saunders v. Mitchell*, 61 Miss. 321.

BANKRUPTCY—CONSTITUTIONAL LAW—USE IN CRIMINAL PROSECUTION OF BOOKS TAKEN BY RECEIVER.—PEOPLE V. SIVARTS AND GREENBERG. 8 AM. B. R. 487 (CRIM. CT. ILL.).—*Held*, that books and papers, taken possession of by a receiver, appointed by a bankruptcy court, cannot be used in a criminal prosecution against the president and director of a corporation, from whose possession or control they were taken.

This decision is not based on the provision of the Bankruptcy Act, section 7, that "no testimony given by him (the bankrupt) shall be offered in evidence against him in any criminal proceeding," but on the constitutional provisions against compelling a witness to testify against himself. The weight of authority holds such use of writings forcibly taken possession of

to be within the constitutional prohibition. *Boyd v. U. S.*, 116 U. S. 616; *U. S. v. James*, 26 L. R. A. 418. So also even when the books are voluntarily given to the receiver for a special purpose. *Blum v. State*, 51 Atl. 26. But the seizure to be within the prohibition must amount to evidence in itself. *State v. Griswold*, 67 Conn. 290. In support of the decision that the protection would extend to the president and director, see 4 *Thompson, Corp.* 3447, 3491. Following the reasoning of the courts in construing the analogous constitutional provisions, it would seem that this decision might have been based on the exemption in the Bankruptcy Act, quoted above. *Counselman v. Hitchcock*, 142 U. S. 547; *Boyd v. U. S.*, 116 U. S. 616.

BANKRUPTCY—CORPORATION CONDUCTING A LAUNDRY.—IN RE WHITE STAR LAUNDRY CO., 9 AM. B. R. 30 (WIS.).—A corporation whose sole business is that of operating and conducting a laundry is not a manufacturing, trading or mercantile corporation, within the meaning of sec. 4b of the 1898 Bankruptcy Act.

The act of 1898 is much more limited in its application to corporations than the act of 1867. The latter act was declared to apply "to all moneyed, business, or commercial corporations and joint stock companies." Sec. 5122 Rev. St. The present act is restricted to "corporations engaged principally in manufacturing, trading or mercantile pursuits." For a discussion of what pursuits come within the language of the act, and a citation of cases, see XII *Yale Law Jour.* 168.

BANKRUPTCY—PARTNERSHIP—WHEN CREDITORS MAY SHARE IN INDIVIDUAL ESTATE.—IN RE GREEN, 8 AM. B. R. 553.—After a partnership had been dissolved and the business settled up, a former partner became bankrupt. *Held*, that section 5f of the Bankruptcy Act, providing for the priority of individual over partnership claims against individual assets, does not define the rule to be followed.

This decision is directly contrary to *In re Wilcox*, 94 Fed. 84, the only other case on this point under the present act. The latter decision held that the exception to the equity rule of marshalling the assets, viz., when there are no firm assets and no solvent partner, being omitted from the act, is inapplicable. In support of this view, which is based on an exhaustive consideration of the cases and the equities involved, see *In re Marwick*, Fed. Cas. No. 9181; *Meyer v. Thornburgh*, 15 Ind. 124; *Potters Works v. Minot*, 10 Cush. 592. The weight of authority, however, seems to support the present decision. *In re Downing*, Fed. Cas. No. 4044, held that the analogous section (36) of the act of 1867, applied only when there were firm and separate assets. So also *In re Knight*, Fed. Cas. No. 7880; *Amsinck v. Bean*, 22 Wall. 395; but *contra*, *In re Litchfield*, 5 Fed. 47, which held, however, that the equity exception also applied. The present decision is in line with those of most of the States. *Smith v. Mallory's Ex'r.*, 24 Ala. 628; *Davis v. Howell*, 33 N. J. Eq. 72; *Ramsey v. Nance*, 54 Ill. 29.

BANKRUPTCY—DISCHARGE—GROUNDS FOR DENIAL.—IN RE BLALOCK, 118 FED. 679.—A petitioner in bankruptcy had made a false oath in a previous proceeding in bankruptcy. *Held*, that this was not sufficient ground for a denial of discharge.

Sec. 29, Bankruptcy Act, makes a false oath in any proceeding in bankruptcy a prison offense, and sec. 14 directs a refusal to discharge in such a case. This case decides that "any proceeding" does not refer to a previous distinct proceeding in which the petitioner has been guilty of misconduct, but only to previous proceedings on the same petition. It seems to be the first adjudication directly on the point. The cases cited, *In re Marx*, 102 Fed. 676, and *In re Logan*, 102 Fed. 876, are not in point as to a previous proceeding and are flatly combatted by *In re Gaylord*, 112 Fed. 668.

CONTRACTS—COVERTURE—LEX LOCI CONTRACTUS—LEX FORI.—FIRST NAT. BANK OF GENEVA, OHIO, v. SHAW ET AL., 70 S. W. 807 (TENN.).—*Held*, that coverture is a defense to an action on a contract though the contract was valid in the State where made.

It is a general rule that a contract valid by the *lex loci contractus* is valid everywhere; *Story, Confl. Laws*, sec. 103; *Nixon v. Halley*, 78 Ill. 611; and through comity States generally support such contracts, although invalid by the *lex fori*, even against those domiciled within them. *Milliken v. Pratt*, 125 Mass. 374; *Wright v. Remington*, 41 N. J. L. 48. In *Bond v. Cummings*, 70 Me. 125, the law of a foreign country prevailed over the State law against a citizen. Some States, however, follow the *lex fori*, where parties are domiciled within them. *Armstrong v. Best*, 112 N. C. 50; *Hayden v. Stone*, 13 R. I. 106.

CONTRACTS—VALIDITY—PUBLIC POLICY.—BONTA v. GRIDLEY ET AL., 78 N. Y. SUPP. 961.—*Held*, a contract between shareholders in a bank and a third party that he should be elected cashier and continued in that capacity for five years, is not void in absence of evidence of bad faith. Davy and Williams, J J., *dissenting*.

By the great weight of authority, such contracts as this are void as against public policy. In *Guernsey v. Cook*, 120 Mass. 501, it was held that an agreement of a shareholder to secure the treasurership of a corporation for a third party was void in the absence of evidence that the transaction was not for a private benefit of the shareholder, or that it was consented to by the other shareholders. So a contract of the president of a bank to make one cashier was held void in *Noel v. Drake*, 28 Kan. 265. *A fortiori*, an agreement by a director to keep another in office is void, even though there is no direct gain to promisor. *West v. Camden*, 135 U. S. 507. The rule is that any agreement of a director by which his official action would be influenced or controlled is dishonest and illegal. *Morawetz, Corp.*, sec. 519. But where the contracting shareholder owned or represented all the shares, his contract with a third party to induce the latter to become a director was valid. *Almy v. Orne*, 165 Mass. 126.

CONSTITUTIONAL LAW—RIGHT OF CONTRACT—SALE OF STOCKS ON MARGIN.—OTIS ET AL. v. PARKER, 23 SUP. CT. REP. 168.—*Held*, Cal. Const. art. 4, sec. 26, avoiding all contracts for sale of stocks on margin is not an unconstitutional interference with the right of contract, although applicable to *bona fide* as well as gambling contracts. Brewer and Peckham, J J., *dissenting*.

In regard to transactions on margins, courts have generally held that where both parties intend that the commodity dealt in shall not be delivered and that there shall be merely a settlement of differences, such transactions are void,—as against statute or at common law. *Universal Exchange v. Strachan,* [1896] A. C. 166; *Flagg v. Baldwin,* 38 N. J. Eq. 219; *Morris v. Norton's Adm'x.,* 43 U. S. App. 739. But they are valid where there are real purchases and sales; *Peters v. Grim,* 149 Pa. 163; *Hatch v. Douglas,* 48 Conn. 116; even though the principal did not intend that his broker should make actual purchase. *Lehman v. Field,* 37 Fed. 852. But recently, upon the view that "gambling in futures" is seriously prejudical to public welfare, there has been legislation declaring illegal all transactions on margins, *bona fide* or otherwise. Unless such legislation is, under the guise of a protection of public morals, a clear, unmistakable infringement of fundamental rights, it will be supported. *Booth v. Illinois,* 184 U. S. 425.

CRIMINAL LAW—INSTRUCTIONS—VIEWS OF JUDGE.—STATE v. BARRY, 92 N. W. 809 (N. DAK.).—*Held,* that a charge giving a clear expression of opinion on the evidence is ground for a new trial.

Belcher v. Prittie, 4 Moore & Scott 275, and *Davidson v. Stanley,* 3 Scott N. R. 49, allow the English judges wide latitude. A wrong observation by the judge on a question of fact was held in *Taylor v. Ashton,* 11 Mees. & W. 401, no ground for a new trial. This rule is in force in the Federal Courts; *United States v. Phil. & R. Co.,* 123 U. S. 113, 114; *R. R. Co. v. Putnam,* 118 U. S. 545; and a few of the State courts still permit the judge to comment upon the weight of the evidence. *Cook v. Steinert,* 69 Conn. 91; *Hurlburt v. Hurlburt,* 128 N. Y. 420; *Rowell v Fuller,* 59 Vt. 688. But by the weight of authority in the State courts any words from which the judge's opinion may be inferred. furnish ground for a new trial. *Sanders v. People.* 124 Ill. 218; *Bird v. State,* 107 Ind. 156; *Com. v. Briant,* 142 Mass. 464; *State v. Elkins,* 63 Mo. 159.

EQUITY—MULTIPLICITY OF SUITS—INJUNCTION.—DUCKTOWN SULPHUR, COPPER & IRON CO. v. FAIN ET AL., 70 S. W. 813 (TENN.).—The complainant was denied an injunction restraining twenty-one landowners from bringing separate suits for injuries caused their land by complainant's sulphur plant. *Held,* that equity may not interfere to prevent a multiplicity of suits merely because there is a community of interest in the question of law or fact involved.

This decision is directly against Prof. Pomeroy [*Pom., Eq. Jur.,* sec. 268], who, as the only text writer treating the subject fully, has been widely followed. *German Alliance Ins. Co. v. Van Cleave,* 191 Ill. 410: *Barrington v. Ryan,* 88 Mo. App. 85. But the decision is supported by Judge Cooley in *Youngblood v. Sexton,* 32 Mich. 406, and by recent cases. *Turner v. Mobile,* 33 So. 132; *Washington Co. v. Williams,* 111 Fed. 801; *Tribette v. R. R. Co.,* 70 Miss. 182. This last case points out that every case on which Prof. Pomeroy relied was cognizable in equity on some ground other than to avoid a multiplicity of suits. *Bliss, Code Pl.,* sec. 76.

INSURANCE—LIFE—INSURANCE AGAINST CRIME OR MISCARRIAGE OF JUSTICE.—BURT ET AL. v. UNION, ETC., INS. CO., 23 SUP. CT. REP. 139.—*Held,* a

policy of life insurance does not insure against legal execution for crime, even though the insured was in fact innocent.

Any contract which insures against the results of criminal conduct is against public policy and void. *Amicable Soc. v. Bolland,* 4 Bligh N. S. 194. And for the same reason, where criminal conduct causes death, a policy is avoided even in absence of express provision to that effect. There is an implied obligation on the part of insured to do nothing wrongfully to accelerate the maturity of policy. So where insured's death was caused by an illegal operation assented to by her, *Hatch v. Mutual Ins. Co.,* 120 Mass. 550, and where one, while sane, committed suicide, *Supreme Commandery v. Ainsworth,* 71 Ala. 436; *Ritter v. Mutual Ins. Co.,* 169 U. S. 139, the policies were avoided. But *contra,* where insured was killed while committing a felony. *McDonald v. Triple Alliance,* 57 Mo. App. 87. Upon analogy, it is here held for the first time, that there can be no legal insurance against miscarriage of justice. Such contracts are against public policy because they are of a wagering nature, and tend to encourage litigation.

INSURANCE—AGREEMENT TO ARBITRATE LOSS—VALIDITY.—HARTFORD FIRE INS. CO. V. HON ET AL., 92 N. W. 746 (NEB.).—*Held,* an agreement in an insurance policy to arbitrate the loss is against public policy and void.

Since the decision of *Scott v. Avery,* 5 H. L. Cas. 811 (1856), agreements in policies to arbitrate the loss, as distinguished from agreements to arbitrate all matters concerning which controversy might arise, have been held valid by the great weight of authority. *Hamilton v. Liverpool, etc., Ins. Co.,* 136 U. S. 242; *Viney v. Bignold,* 20 Q. B. D. 172. But the Nebraska court held otherwise in *Ins. Co. v. Etherton,* 25 Neb. 505, and subsequent cases; and in the present case emphatically reasserts its position.

MUNICIPAL CORPORATIONS—GARNISHMENT—NECESSARY PUBLIC WORK.—PRINGLE V. GUILD ET AL., 118 FED. 655.—*Held,* that a municipality could not be garnisheed to reach money owed by it on a contract for necessary public work and due during the construction.

The statutes generally provide that corporations may be garnisheed, but as to whether public corporations are included, there is great conflict. Some States hold that they are. *Bray v. Wallingford* 20 Conn. 416; *Newark v. Funk,* 150 Ohio St. 462. But the weight of authority is that public corporations are exempt. *Merwin v. Chicago,* 45 Ill. 133; *Erie v. Knapp,* 29 Pa. St. 173.

NEGOTIABLE INSTRUMENTS—EXCHANGE.—KASLACK V. WOLF ET AL., 92 N. W. 514 (NEB.).—*Held,* that the negotiability of a promissory note is not destroyed by an agreement to pay with exchange on a point other than that at which the note is made payable.

The theory upon which this decision rests is that an agreement to pay exchange is merely incidental and does not affect the negotiability of the note. *Smith v. Kendall,* 9 Mich. 241; *Clark v. Skeen,* 61 Kan. 526. A stronger line of decisions declares that agreement to pay exchange renders the sum payable uncertain and therefore destroys negotiability. *Windsor Savings Bank v. MacMahon,* 38 Fed. 283; *Hughett v. Johnson,* 28 Fed. 865.

NOTES—LIMITATIONS—ACKNOWLEDGMENT OF DEBT.—CONNECTICUT TRUST AND SAFE DEPOSIT CO. v. WEAD ET AL., 65 N. E. 261 (N. Y.).—The indorser of a note, after limitations had run as against him, wrote a letter offering to buy the note for a small sum. *Held*, that his liability was not revived thereby.

To revive a debt after limitations have run against it, an acknowledgment must be clear, unequivocal, and without conditions. *Shepherd v. Thompson*, 122 U. S. 231; *Cocks v. Weeks*, 7 Hill (N. Y.) 45. A proposal to arbitrate is not sufficient. *Shaw v. Newell*, 1 R. I. 488. Nor is it sufficient though accompanied by an acknowledgment of some indebtedness. *Curtis v. Sacramento*, 70 Cal. 412. An offer to compromise is not enough. *Bell v. Morrison*, 1 Pet. (U. S.) 359; *Currier v. Lockwood*, 40 Conn. 349; *Creuse v. Defiganiere*, 10 Bosw. (N. Y.) 122. The offer in this case is declared to be a recognition of a former, but not of an existing, debt.

NOTES—LIMITATIONS—DEMAND AFTER DATE.—HARDON v. DIXON, 78 N. Y. SUPP. 1061.—Plaintiff sued on a note payable "on demand after date." *Held*, that the statute of limitations does not begin to run until the day after date. Patterson and Ingraham, J J., *dissenting*.

Most authorities hold that such a note is not distinguishable from one payable on demand. It may be sued on, on the day of making, and therefore the statute of limitations begins to run on that day. *Hitchings v. Edwards*, 132 Mass. 338; *Fenno v. Gay*, 146 Mass. 118; 13 *Am. & Eng. Enc. Law* 748; 2 *Daniel, Neg. Instr.*, 5th ed., sec. 1215. The words "on demand after date" are more nearly analogous to such an expression as, "with interest after date." *O'Neil v. Magner*, 81 Cal. 631; *Cousins v. Partridge*, 79 Cal. 228. But that in New York such notes are not equivalent to demand notes seems to be well settled. *Bank v. Townsend*, 87 N. Y. 8; *Crim v. Starkweather*, 88 N. Y. 339.

NUISANCES—MAINTENANCE—NOTICE TO DEFENDANT.—FINKELSTEIN v. HUNER, 79 N. Y. SUPP. 334.—In an action for nuisance there was no evidence that the nuisance existed before the defendant became the owner of the premises. *Held*, that proof of notice to the defendant of the existence of the nuisance was not required. O'Brien and Laughlin, J J., *dissenting*.

The rule is that no liability will attach until the grantee has received notice or had knowledge of the existence of the nuisance. *R. R. Co. v. Smith*, 64 Fed. 679; *Johnson v. Lewis*, 13 Conn. 303; *Nichols v. Boston*, 98 Mass. 39; *Wenzlick v. McCotter*, 87 N. Y. 122. The opinion claims that the fact that there was no evidence that the nuisance existed before the property came into the hands of the defendant made proof of notice unnecessary. The only citation in support of this is *Conhocton Stone Road v. R. Co.*, 51 N. Y. 573. The same case is cited in the dissenting opinion, and would seem rather to support the latter. It was there held that the proof must show notice to, or knowledge by the defendant to render him liable.

PRINCIPAL AND AGENT—UNDISCLOSED AGENT—TIME FOR ELECTION.—TEW v. WOLFSOHN ET AL., 79 N. Y. SUPP. 286.—*Held*, that where an agent did not disclose his agency, the plaintiff in an action on a contract made by the agent need not elect whether to hold principal or agent until the close of the case. Van Brunt, P. J., and McLaughlin, J., *dissenting*.

This decision is confessedly at variance with many dicta, and with some decisions, notably *Tuthill v. Wilson*, 90 N. Y. 423. It is supported by *Story, Agency*, sec. 295, quoting 2 *Livermore, Agency*, sec. 267. But it is considered to have been rejected in *Wharton, Agency*, sec. 473, citing *Priestley v. Fernie*, 3 H. & C. Ex. 977. In *McLean v. Sexton*, 44 N. Y. App. 520, the doctrine of the present case is distinctly laid down as the New York rule, though avowedly contrary to that in England. See also *Cobb v. Knapp*, 71 N. Y. 348; *Bank v. Wallis*, 84 Hun 376; *Beymer v. Bonsall*, 78 Pa. St. 298; *Maple v. R. Co.*, 40 Ohio 313.